

Senate Fiscal Agency
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SFA

BILL ANALYSIS

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Senate Bill 893 (Substitute S-2 as passed by the Senate)
Senate Bill 894 (Substitute S-2 as passed by the Senate)
Senate Bill 1162 (as passed by the Senate)
House Bill 5184 (Substitute S-1 as reported)
House Bill 5185 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 5186 (Substitute S-1 as reported by the Committee of the Whole)
House Bill 5187 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator Mike Rogers (Senate Bills 893 & 894)
Senator William Van Regenmorter (Senate Bill 1162)
Representative Gene DeRossett (House Bill 5184)
Representative William O'Neil (House Bill 5185)
Representative Jim Howell (House Bill 5186)
Representative Ruth Jamnick (House Bill 5187)
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections (House Bills 5184-5187)

Date Completed: 3-17-00

RATIONALE

Public Acts 32 and 235 of 1999 (Senate Bills 7 and 562) amended the Michigan Penal Code to establish felony penalties for the use of computers or the Internet to commit certain crimes. The Penal Code, as amended by Public Acts 32 and 235, prohibits use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purposes of committing, attempting to commit, conspiring to commit, or soliciting another to commit certain crimes against minors, bombing offenses, stalking, and gambling and gaming violations. A violation involving a gambling offense is a felony, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. A violation involving a bombing or bomb threat offense, or a second or subsequent gambling conviction, is a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both.

In addition, Public Act 53 of 1979 prohibits access to computers for certain fraudulent purposes and the intentional and unauthorized access to, and alteration, damage, and destruction of computers. That Act originally provided criminal penalties for various violations (e.g., embezzlement, fraudulent disposition of personal property, and larceny) that involved the use of a computer or computer system. Amendments enacted in 1996 expanded the prohibited activities to include unauthorized access to or use of computers or computer systems and infecting computers or computer systems with inserted instructions of programs (e.g., spreading a computer virus). Violations of the Act are punishable on a graduated penalty basis, depending on the aggregate amount of the loss incurred by a victim.

Some people feel that the penalty structure for the computer-use crimes should be based on the underlying crime committed or attempted, with graduated penalties for more serious crimes, rather than having specific maximum penalties attached to them. Also, since the investigation of these high-tech offenses may involve great expense and require innovative methods of investigation, some people believe that the computer-use crimes should be included in forfeiture and law enforcement reimbursement provisions to allow police and prosecutors to recover some of the costs involved in investigating and prosecuting these types of offenses. In addition, it has been suggested that the Revised Judicature Act's forfeiture provisions should apply to attempted crimes and solicitation of another person to commit a crime.

CONTENT

The bills would amend various acts to restructure penalties for using the Internet or a computer to commit certain crimes and include those offenses in provisions of law allowing for forfeiture of property used in or derived from criminal activity and for reimbursement of law enforcement expenses.

Senate Bill 893 (S-2) would amend the Revised Judicature Act (RJA); Senate Bill 894 would amend the Michigan Penal Code; Senate Bill 1162 and House Bill 5184 (S-1) would amend the Code of Criminal Procedure; and House Bills 5185 (S-2), 5186 (S-1), and 5187 (S-1) would amend Public Act 53 of 1979.

The bills would take effect 90 days after their enactment. Senate Bill 1162 is tie-barred to Senate Bill 894. House Bill 5184 (S-1) is tie-barred to Senate Bills 893, 894, and 1162 and House Bills 5185, 5186, and 5187. House Bills 5185 (S-2), 5186 (S-1), and 5187 (S-1) are tie-barred to each other and to Senate Bills 893, 894, and 1162.

Senate Bill 893 (S-2)

The bill would amend Chapter 47 of the RJA (“Forfeiture or Seizure of Certain Property”) to include violations committed by use of the Internet, a computer, or a computer program, network, or system in the list of offenses for which seizure and forfeiture proceedings may apply to property used in or obtained through the commission of a crime. (The Penal Code offense that would be added to the definition of “crime” in Chapter 47 would be amended by Senate Bill 894 (S-2), as described below.)

In addition, forfeiture currently is allowed for committing or conspiring to commit any of the offenses listed in Chapter 47 of the RJA. The bill also would allow forfeiture proceedings for

attempting or soliciting another to commit any of the listed offenses.

Senate Bill 894 (S-2)

The bill would amend the Michigan Penal Code to revise offenses and penalties for certain crimes involving use of the Internet or a computer, and provide for reimbursement to the State or a local unit for investigation and prosecution of those crimes.

The Penal Code prohibits use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following:

- Involvement in child sexually abusive activity or material, kidnapping, first-, second-, third-, or fourth-degree criminal sexual conduct (CSC), or assault with intent to commit CSC, when the victim or intended victim is a minor.
- Solicitation of a child for immoral purposes, recruitment or inducement of a minor to commit a felony, kidnapping of a child under the age of 14, or stalking or aggravated stalking.
- An explosives offense listed in Chapter 33 of the Code, causing a death by explosives, selling explosives to a minor, or intentionally reporting a crime relating to a bombing, attempted bombing, or threat to bomb, knowing that the report is false.
- Various gambling or gaming offenses prohibited by the Penal Code or the Michigan Gaming Control and Revenue Act.

The bill would delete from this provision the gambling and gaming offenses, and would restructure the penalties. Under the bill, the penalty would vary based on the penalty for the underlying crime, as shown in Table 1.

Table 1

Underlying Crime	Offense Level	Maximum Imprisonment	Maximum Fine
Less than 1 year	misdemeanor	1 year	\$5,000
1-2 years	felony	2 years	\$5,000
2-4 years	felony	4 years	\$5,000
4-10 years	felony	10 years	\$5,000
10-15 years	felony	15 years	\$10,000
15 years - life	felony	20 years	\$20,000

In addition, under the bill, a person convicted of an Internet or computer offense described above could be ordered to reimburse the State or a local unit of government for expenses incurred in relation to the investigation and prosecution of the violation.

Senate Bill 1162

The bill would amend the Code of Criminal Procedure to include in the sentencing guidelines revised penalties proposed by Senate Bill 894 (S-2) for use of the Internet or a computer to commit

certain crimes. The bill would delete the current sentencing guidelines provisions for those crimes.

The bill would establish the class and statutory maximum for using a computer to commit those crimes, according to the maximum term of imprisonment applicable to the crime committed, as shown in Table 2.

Table 2

Maximum Term of Crime (Years)	Felony Class	Statutory Maximum
At least 1 but less than 2	G	2
At least 2 but less than 4	F	4
At least 4 but less than 10	D	7
At least 10 but less than 20	C	10
At least 20 or life	C	20

These offenses would have a “variable” offense category, which would be the same as for the underlying offense. A sentencing court would have to determine the offense category, offense variable level, and prior record variable based on the underlying offense.

House Bill 5184 (S-1)

The bill would include in the Code of Criminal Procedure’s sentencing guidelines provisions criminal offenses contained in Public Act 53 of 1979, along with new penalties proposed by House Bill 5186 (S-1) for some of those offenses.

Under House Bill 5184 (S-1), unlawful access to a computer, computer system, or computer program would be a Class E property felony with a statutory maximum of five years’ imprisonment. Unlawful access to a computer, computer system, or computer program with a prior conviction would be a Class D property felony with a statutory maximum sentence of 10 years’ imprisonment.

The bill would establish the class and statutory maximum for using a computer to commit a crime, according to the maximum term of imprisonment applicable to the crime committed, as shown in Table 3.

Table 3

Maximum Term of Crime (Years)	Felony Class	Statutory Maximum
At least 1 but less than 2	G	2

At least 2 but less than 4	F	4
At least 4 but less than 10	D	7
At least 10 but less than 20	C	10
At least 20 or life	C	20

These offenses would have a “variable” offense category, which would be the same as for the underlying offense. The bill would instruct the sentencing court to determine the offense category, offense variable level, and prior record level based on the underlying offense.

House Bill 5185 (S-2)

Section 6 of Public Act 53 of 1979 prohibits the use of a computer or a computer program, system, or network to commit a crime. The bill also would prohibit the use of a computer or a computer program, system, or network to attempt, conspire, or solicit another person to commit a crime.

The bill specifies that Section 6 would not prohibit a person from being charged with, convicted of, or punished for any other violation committed by that person while violating or attempting, conspiring, or soliciting another person to violate this section, including the underlying offense. The bill also specifies that Section 6 would apply regardless of whether the person was convicted of committing or attempting, conspiring, or soliciting another person to commit the underlying offense.

House Bill 5186 (S-1)

Current Penalties

Currently, a violation of Public Act 53 is a misdemeanor punishable by up to 93 days’ imprisonment and/or a maximum fine of \$500 or three times the aggregate amount, whichever is greater, if the violation involves an aggregate amount of less than \$200. (The description of House Bill 5187 (S-1), below, discusses the definition of “aggregate amount”.) If a violation involves an aggregate amount of \$200 or more but less than \$1,000, or the offender has a prior conviction, the offense is a misdemeanor punishable by up to one year’s imprisonment and/or a maximum fine of \$2,000 or three times the aggregate amount, whichever is greater.

If a violation of the Act involves an aggregate amount of \$1,000 or more but less than \$20,000, or the offender has two prior convictions, the offense is a felony punishable by up to five years’ imprisonment and/or a maximum fine of \$10,000 or three times the aggregate amount, whichever is greater. If a

violation involves an aggregate amount of \$20,000 or more, or the offender has three or more prior convictions, the offense is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the aggregate amount.

Access in Order to Defraud or Steal

Under the bill, the penalties described above would apply only to a violation of Section 4 of the Act, which prohibits a person from intentionally gaining access or causing access to be made to a computer or a computer program, system, or network "to devise or execute a scheme or artifice with the intent to defraud or to obtain money, property, or a service by a false or fraudulent pretense, representation, or promise".

Access in Order to Alter, Damage, or Delete

Section 5 of the Act prohibits a person from doing either of the following intentionally and without authorization, or by exceeding valid authorization:

- Gaining access or causing access to be made to a computer or computer program, system, or network to acquire, alter, damage, delete, or destroy property or otherwise use the service of the computer or computer program, system, or network.
- Inserting or attaching or knowingly creating the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer or computer program, system, or network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer or computer program, system, or network.

Under the bill, a violation of Section 5 would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. If the offender had a prior conviction, the felony would be punishable by up to 10 years' imprisonment and/or a maximum fine of \$50,000.

("Prior conviction" would mean a violation or attempted violation of the Michigan Penal Code's prohibition against using the Internet or a computer for the crimes described in Senate Bill 894 (S-1); Public Act 53; or a substantially similar law of the United States, another state, or a political subdivision of another state.)

Computer Use to Commit Crime

The bill would establish penalties for a violation of Section 6 (described in House Bill 5185 (S-2), above) based upon the maximum term of imprisonment for the crime that was committed or attempted by use of

a computer or computer program, system, or network, as shown in Table 4.

Table 4

Maximum Term of Underlying Crime (years)	Proposed Maximum Fine	Proposed Maximum Term(years)
<u>Misdemeanor or Felony</u>		
1 or less	\$5,000	1
At least 1 but less than 2	5,000	2
At least 2 but less than 4	5,000	4
<u>Felony</u>		
At least 4 but less than 10	5,000	7
At least 10 but less than 20	10,000	10
At least 20 or life	20,000	20

If the underlying crime were a misdemeanor punishable by one year or less, the violation of Section 6 would be a misdemeanor. The remaining violations would be felonies.

A court could order that a term of imprisonment imposed for a violation of Section 6 be served consecutively to and preceding any term of imprisonment imposed for a conviction of the underlying offense.

Law Enforcement Reimbursement

The bill would authorize the sentencing court to order a person convicted of a Public Act 53 violation to reimburse the State or a local unit for expenses incurred in relation to the investigation and prosecution of the violation.

House Bill 5187 (S-1)

The bill would revise the definition of "aggregate amount" in Public Act 53. Currently, that term means any direct or indirect loss incurred by a victim, including the value of any money, property or service lost, stolen, or rendered unrecoverable by the offense, or any actual expenditure incurred by the victim to verify that a computer or a computer program, system, or network was not altered, acquired, damaged, deleted, disrupted, or destroyed by the access. The bill specifies that direct or indirect losses incurred in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value of the loss involved in a violation. The bill also would refer to a victim or a "group of victims".

MCL 600.4701 (S.B. 893)
750.145d (S.B. 894)
777.16g (S.B. 1162)
777.17 (H.B. 5184)
752.796 (H.B. 5185)
752.797 (H.B. 5186)
752.792 (H.B. 5187)

The bill would have an indeterminate fiscal impact on State and local government. The bill would provide for seizure and forfeiture proceedings associated with computer-related crimes. It is not possible at this time to estimate the likely revenue that would be received by State and local government under this provision.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan has been a pioneer in enacting penalties for computer use in crimes. Public Act 53 was enacted in 1979, as computer use among the public was on the verge of becoming widespread. That Act was amended in 1996 to include sanctions for acts of computer piracy, such as spreading viruses. Last year, Public Acts 32 and 235 enacted enhanced penalties in the Penal Code for computer use in certain exploitative crimes.

This package of Senate and House bills would help to make the proscriptions against criminal computer use in Public Act 53 and the Penal Code more effective. Investigating those types of high-tech crimes can involve expensive equipment and the need for innovative policing techniques. Including the computer-use offenses in provisions that allow for forfeiture of the tools and proceeds of crime, as well as authorizing law enforcement expense reimbursement orders, would help police and prosecutors to enforce these laws more efficiently and thoroughly.

In addition, the current penalties for the computer-use crimes in both Public Act 53 and the Penal Code may be inappropriate. Since the penalties are set by those statutes without regard to the underlying crime involved in the violation, there may be cases in which the punishment is either too harsh or too lenient. Also, Public Act 53 bases some fines on the aggregate amount of loss to a victim. While some crimes that could be committed with the use of a computer may be serious, or even heinous, they might not involve large-scale financial losses. This could keep applicable penalties relatively lenient. Gearing the penalties to the seriousness of the underlying crime, as the bills propose to do, would ensure that appropriate criminal justice sanctions were available in each case.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 893 (S-2)

Senate Bills 894 (S-2) & 1162

Senate Bills 894 (S-2) and 1162 would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people may be convicted of unlawfully using a computer to commit, attempt to commit, or solicit another to commit a crime such as child sexual abuse, kidnapping, stalking, or criminal sexual conduct or a crime in which the victim is a minor. The felonies would be incorporated into the sentencing guidelines and would range from Class B to Class G offenses based on the maximum penalty for the underlying crime. For example, an offender accused of a crime that has a maximum penalty of 15 years to life would be subject to the Class B offense. The minimum sentence ranges are shown in Table 5.

Table 5

Crime Class	Minimum Sentence Range (Months)	
	<u>From</u>	<u>To</u>
B	0-18	117-160
C	0-11	62-14
D	0-6	43-76
E	0-3	24-38
F	0-3	17-30
G	0-3	7-23

Assuming that five offenders a year are convicted of using a computer to commit one of the specified crimes for which the maximum penalty is 15 years or life and that they receive the highest minimum sentence, the cost of incarceration would be \$1,045,000 and this could be in addition to other incarceration costs for the underlying crimes. Assuming that five offenders a year are convicted of using a computer to commit a specified crime for which the maximum penalty is at least one year but not greater than two years, and that these offenders receive the maximum penalty, the cost would be \$210,800, which could be in addition to other incarceration costs for the underlying crime. A local sanction is appropriate for offenders who score sentencing guideline recommendations where the minimum sentence is less than 12 months. Local units of government would incur the cost of a local sanction and the costs vary among the counties.

Senate Bill 894 (S-2) also provides that a court could order reimbursement of law enforcement expenses to be made to a State or local unit of government, but A9900s893a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

the frequency and amount of such reimbursement cannot be determined at this time.

House Bills 5184 (S-1)-5187 (S-1)

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people may be convicted of unlawful access to a computer. The new penalties would be incorporated into the sentencing guidelines as a Class E crime for first offenses and a Class D crime for second or subsequent offenses. Also, there are no data available to indicate how many people may be convicted of using a computer to commit a crime. The new penalties would range from Class C to Class G based on the maximum penalty for the underlying crime. The minimum sentence ranges are shown in Table 6.

Table 6

Crime Class	Minimum Sentence Range (Months)	
	<u>From</u>	<u>To</u>
C	0-11	62-114
D	0-6	43-76
E	0-3	24-38
F	0-3	17-30
G	0-3	7-23

Assuming that five offenders a year would be convicted of unlawful access to a computer for the first time and given the highest minimum sentence, the cost of incarceration, assuming an average cost of \$22,000 per year, would be \$348,300. Assuming that five offenders a year would be convicted of using a computer to commit a crime for which the maximum penalty is 20 years or life and that they would receive the highest minimum sentence, the cost of incarceration would be \$1,045,000, which could be in addition to other incarceration costs for the underlying crime. Assuming that five offenders a year would be convicted of using a computer to commit a crime for which the maximum penalty is at least one year but not greater than two years, and that these offenders would receive the maximum penalty, the cost would be \$210,800, which could be in addition to other incarceration costs for the underlying crime. A local sanction is appropriate for offenders who score sentencing guideline recommendations where the lowest minimum sentence is less than 12 months. Local units of government would incur the cost of a local sanction and the costs vary among the counties.

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